IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for mandates in the nature of writs of Certiorari, Mandamus and Prohibition under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Mrs. Nagaratnam Sakunthala
N.55/3, Amman Road,
Kander Madam,
Jaffna.

C.A. Writ Application No. 165/15

Currently residing at :
No. 595/8, Navalar Road,
Nallur, Jaffna.

PETITIONER-PETITIONER

Vs.

1. Commissioner of Lands (Northern Province)
   Department of Land Administration,
   Northern Provincial Council,
   No. 80, Kandy Road, Chundikuli,
   Jaffna.

2. Divisional Secretary
   Kandavalai.

3. Secretary
   Ministry of Land Development,
   Land Secretariat,
   1200/6, Rajamalwatte Avenue,

Battaramulla.

4. Assistant Secretary
Ministry of Land Development,
Land Secretariat,
1200/6, Rajamalwatte Avenue,
Battaramulla.

5. Ponnuthurai Shanthakumar
No. 20, Paranthan,
Kilinochchi District.

5A. Ponnuthurai Shanthakumar
No. 20, Mulliathivu Road,
Paranthan,
Kilinochchi District.

6. Mrs. T. Vasantharubi
No. 20, Paranthan,
Kilinochchi District.

6A. Mrs. T. Vasantharubi
No. 20, Mulliathivu Road,
Paranthan,
Kilinochchi District.

RESPONDENTS -RESPONDENTS

Before : Dhammika Ganepola, J.

Counsel : K.V.S. Ganesharajan with M. Mangaleswary Shanker, Vithusha Loganathan and Mr. Sulaxshan instructed by Brintha Chandragesh for the Petitioner.

Chaya Sri Nammuni, D.S.G. for the Respondents.

Argued on	:	21.05.2025	
Written Submissions	:	Petitioner	: 09.07.2025
tendered on		1st to 4th Respondents	: 25.07.2025
Decided on	:	09.09.2025	

Dhammika Ganepola, J.

The Petitioner's father, Velupillai Ponnuththurai, had entered into possession of the State land called "KARACHCHCHIKADU" situated at Kandawalai in Paranthan upon a permit bearing No. LD/E/157/20 (P1) which was issued under the Land Development Ordinance (hereinafter sometimes referred to as "LDO") by the Government Agent of Jaffna on 01.04.1959. Upon the death of the said Ponnuththurai in 1978, his wife, Pakkiam Ponnuththurai, had succeeded upon the said Permit in terms of Section 48 of the LDO. Said Pakkiam Ponnuththurai, before her death in 1985, had transferred her rights under the said permit to her daughter, the Petitioner. The above permit holders had continuously used the impugned land for cultivation of paddy and had the possession and the control of the said land until the Petitioner was displaced in 1996, owing to the civil war that prevailed in the area at the time.

In 2002, following the ceasefire, when the Petitioner had visited the said land, she had noticed that the 5th and the 6th Respondents, without any rights or interest, had entered the land illegally and were remaining there. The Petitioner had immediately made representations to the 2nd Respondent, Divisional Secretary, and had requested immediate action and redress. However, the response had been slow, and the outbreak of

the next round of war in 2006 had prevented the Petitioner from effectively pursuing the matter.

After the end of the war situation in 2009, the Petitioner had made repeated representations to the 2nd Respondent seeking an early remedy pertaining to the issue. Thereafter, the Petitioner had received a copy of a letter dated 30.05.2014 (P3) addressed to the 2nd Respondent by the 1st Respondent in which it had been mentioned that it was decided that the said land be granted to Mr. V. Ponnuthurai (father of Petitioner) and instructions had been given to two persons who had encroached into the land to quit at the end of the harvest period failing which legal action be taken to oust them. It had been mentioned that the said letter P3 is followed pursuant to an inquiry held in respect of the dispute referred on 06.05.2014. Further, said letter had indicated that action would be taken to provide them with land and with a housing scheme at another place. Thereafter, the Petitioner had received copies of the letters dated 20.06.2014 (P4 and P4a) sent to the 5th and the 6th Respondents by the 2nd Respondent informing them that they should vacate the land in dispute in compliance with the decision arrived at the inquiry held on 06.05.2014, and alternative lands will be provided to them.

Despite the above directions, the 5th and the 6th Respondents had remained in the land, and no action had been taken to evict them by the 1st and the 2nd Respondents. However, subsequently, the 2nd Respondent by the letter dated 12.08.2014 (P5) had informed the Petitioner that as per the decision taken on 11.07.2014 at the mobile service, out of the entire land of ½ acre, ¼ acre will be allotted to the Petitioner and the remaining ¼ acre will be allotted to the 5th and the 6th Respondents by which each shall be entitled for 20 perches. The Petitioner had rejected and protested the said decision of the 2nd Respondent to divide the said land in such a manner as such decision is arbitrary, unreasonable and *ultra vires*.

Thereafter, in response to the written representations made to the Commissioner General of Lands by the Petitioner, the Petitioner had received a copy of a letter dated 03.09.2014 (P9) addressed to the Provincial Land Commissioner by the 2nd Respondent, Divisional Secretary,

stating that action would be taken to grant the land to the Petitioner after receiving a response from the Commissioner General of Land. The Petitioner states that the stance reflected in the aforesaid letter P9 is untenable and had been issued in bad faith. Subsequently, the Petitioner had received the letter dated 24.12.2014 (P10) signed by the 3rd and 4th Respondents, stating that, as per the decision taken at the mobile service in Kilinochchi, action would be taken to grant ¼ Acre to the Petitioner and 20 Perches to the 5th and 6th Respondents each.

The Petitioner states that the decisions taken by the 2nd, 3rd, and 4th Respondents, as reflected in the letters marked P5, P7, P9, and P10, are *ultra vires* and are subject to the writ jurisdiction of this Court. Further, it was submitted that there is a statutory and public duty cast upon the 1st to the 4th Respondents to take swift measures to evict the 5th and the 6th Respondents from the land in issue and to duly place the Petitioner in possession of the entire land in issue. Accordingly, the Petitioner had invoked the jurisdiction of this Court by seeking *inter alia* mandate in the nature of a Writ of Certiorari to quash the decisions contained in the letters marked P5, P9 and P10, a Writ of Mandamus to compel the 1st to the 4th Respondents to perform their statutory duty of evicting the 5th and 6th Respondents from the land in issue and to place the Petitioner in possession thereof and Writ of Prohibition to restrain 1st to 4th Respondents causing the division of the land in issue and/or alienating any portion of the said land to the 5th and the 6th Respondents.

It is on the common grounds that the Petitioner's father had been issued a Permit in respect of the land in issue. However, the 1st to 4th Respondents challenge the authenticity of the transfer of possession of the land in subject to the Petitioner on basis that the said Permit P1 only carries a name and a signature and does not bear the seal of the Divisional Secretary. Furthermore, the Respondents state that two signatures are required for the amendment of the name of the permit holder in the Permit P1, as the same had been amended twice. However, the Respondents have failed to demonstrate the existence of any legal requirement to the effect that two signatures are required for the amendment of the name of the permit holder as reflected in Permit P1.

Furthermore, the Respondents state that they are not in a position to verify how the permit devolved to the Petitioner since the entirety of the relevant records are unavailable. The Petitioner by producing the Permit marked P1 has established to the best of her ability that she has rights over the land in view of the same. In the event where the Petitioner has submitted documents to prove her entitlement to the land and if the 1st to 4th Respondents are not in a position to admit such position, the burden of submitting evidence in rebuttal lies upon the 1st to 4th Respondents. Rights of a party should not be prejudiced owing to a failure or omission on the part of an administrative authority. Further, it appears that the consequential actions taken by such Respondents demonstrate that they have acted, conceding the interests of the Petitioner over the land. Thus, in the given instance the 1st to 4th Respondents cannot approbate and reprobate their position. Hence, the 1st to the 4th Respondents are estopped from taking up a contrary position claiming that the Respondents cannot verify the rights of the Petitioner with the available documents. As such, merely because the Respondent failed to verify the rights of the Petitioner and to produce evidence in rebuttal, this Court is not inclined to reject the existence of the Permit P1, its contents or the rights of the Petitioner upon it. Therefore, I am of the view that the transfer of the rights to the Petitioner over the P1 cannot be denied.

The Petitioner also moves this Court to issue a Writ of Mandamus compelling the 1st to the 4th Respondents to perform their statutory duty of evicting the 5th and 6th Respondents from the land in issue. The Petitioner contends that the 5th and the 6th Respondents, being encroachers and trespassers, are liable to be dealt under the provisions of Section 168A(1) of the LDO. Section 168A of the LDO is as follows;

> *168A.(1) If any person encroaches on any land which has been alienated under this Ordinance on a permit, he shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding five hundred rupees or to imprisonment of either*

description for a term not exceeding six months or to both such fine and imprisonment.

(2) Proceedings under subsection (1) may be instituted by the Government Agent of the administrative district in which the land encroached on is situated or by any officer authorized in that behalf by such Government Agent.

(3) A conviction under subsection (1) shall operate as an order of ejectment made under section 125 and on such conviction the Government Agent of the administrative district in which the land encroached on is situated or other prescribed officer may, after the lapse of the appealable time, or, if any appeal has been preferred, after the conviction has been affirmed in appeal, apply to the Magistrate under section 127 for the enforcement of such order of ejectment.

In view of the Section 168A above, it is apparent that a statutory and a public duty is cast upon the Divisional Secretary to take necessary action in respect of any encroacher occupying the land alienated under the permit. In Vasana v. Incorporated Council of Legal Education and Others [2004]1 SLR 154, it was held that, "*A Writ of mandamus is available against a public or a statutory body performing statutory duties of a public character. In order to succeed in an application for a Writ of Mandamus, the Petitioner has to show that he or she has a legal right and the Respondent, a corporate, statutory or public body, has a legal duty to recognise and give effect to the Petitioner's legal right*"

In the backdrop where the Petitioner has satisfied this Court that a public duty exists under Section 168A of the LDO to which the Respondents should give effect to, I am of the view that the 1st to the 4th Respondents should take necessary actions in respect of the 5th and the 6th

Respondents who have been identified as encroachers as stipulated under Section 168A of the LDO.

However, the Petitioner submits that the subsequent decision of the 1st to 4th Respondents to divide the land in dispute among the Petitioner, 5th and the 6th Respondents as reflected in the P5 and P10 suggests that they have failed and neglected to discharge the aforesaid duty and thereby has acted *ultra virus.*

It is the submission of the 1st to the 4th Respondents that although the decision was taken to give alternative land to the 5th and the 6th Respondents as evident from the letter P3. The said decision claims to have been arrived at considering an appeal made by 5th and 6th Respondents, the developments made thereupon by the 5th and 6th Respondents and the period of their possession in the land. Subsequently, a decision had been taken at a mobile land service held on 11.07.2024 to allocate ½ acre of the land in issue to the Petitioner and the balance portion of the land ¼ acre each to the 5th and the 6th Respondents. The fact that the 5th and 6th Respondents have made certain developments on the land in question is undisputed.

It is observed that the Circular No.2013/01 dated 31.01.2013 (R1) issued by the Commissioner General of Land to the Divisional Secretaries, stipulates that an Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces had been in place. Said Programme provides for the solving of such post-conflict State land disputes. Clause 2.2.1 of the said Circular R1 provides relevant guidelines in respect of the distribution of lands to the people who lost lands due to the conflict in the Northern and Eastern provinces of the country. Clause 2.2.1.2 specifically stipulates that where the persons who have lost their lands because other persons have permanently settled on said lands whereas such original owners have encountered practical problems in claiming such land again, actions should be taken to identify suitable lands in those areas itself and to provide alternative lands to landless persons and to people who had lost their lands.

It is observed that the Divisional Secretary had failed to identify or to provide such alternative land for the Petitioner who had lost her land. Nevertheless, the 5th and the 6th Respondents had been allocated alternative lands as reflected in the letters marked P4 and P4a as facilitated by the Clause 2.2.1.1. of the Circular R1. Said Clause 2.2.1.1 states that "*If people have lost their encroached state lands after residing in encroached state lands in the relevant areas and they are qualified to get lands; they should also be considered when alternative lands are given*". The granting of the portion of the land claimed by the Petitioner to the 5th and the 6th Respondent who have been identified as encroachers is not in line with the guidelines specified under the Circular R1. The Divisional Secretary has not given any valid reason to deviate from his original decision to allocate alternative lands for the 5th and the 6th Respondents. Since the 1st to 4th Respondents have identified the 5th and the 6th Respondents as encroachers (see P3) and had acted accordingly, decision to allocate portion of the land in dispute to 5th and 6th Respondent (P4, P4a, P5 and P10) based on the aforesaid reasons cannot be accepted. Therefore, I am of the view that the decision reflected in documents P5, P9 and P10 are without a valid reason and is unjustifiable.

The letter P3, which states that steps would be taken to oust the encroachers (i.e. the 5th and the 6th Respondents), had been issued by the Provincial Land Commissioner to the Divisional Secretary with a copy to the Petitioner. Furthermore, the letters marked P4 and P4a issued by the Divisional Secretary to the 5th and the 6th Respondents informing the decision to grant alternative land were also copied to the Petitioner. Upon careful perusal of the contents of the letters P3, P4 and P4a, it is apparent that such letters create a legitimate expectation in the mind of the Petitioner of placing her in possession of the entire land. However, the subsequent actions and the conduct of the 1st to the 4th Respondents frustrate such legitimate expectations of the Petitioner.

The 1st to 4th Respondents submit that the land referred to in Permit P1 had been given for residential purposes and to maintain the garden. The 1st to 4th Respondents submit that the Petitioner had failed to take

residence or to maintain garden as required under the Permit P1. Thus, it is position of the said Respondents that the Petitioner has violated the condition contained in the Permit P1. However, the Petitioner claims that she was unable to make any improvement on the land in dispute, due to the war situation of the area. Considering the facts that there is a consensus among the parties that a civil war prevailed in the area concerned at the relevant time and the Petitioner was displaced owing to such conditions, I am of the view that the failure of the Petitioner to develop the land is justifiable. Further, the encroachers occupying the land in question would prevent the Petitioner from developing the land. At the same time, the 1st to 4th Respondents have never taken steps to cancel the Permit P1 in view of the alleged violation as required by the law. Considering the above discussed exceptional circumstances which prevented the Petitioner from complying with the conditions of the Permit P1, the failure of the Petitioner to reside in or develop the land in issue should be excused.

Accordingly, I am of the view that the surrounding circumstances of this application suggest that the 2nd to 4th Respondents have failed to duly exercise their discretion in arriving at the impugned decisions reflected in documents P5, P9 and P10. Thus, I am also of the view that the assessment of facts by the 1st to 4th Respondents is *ultra vires,* unreasonable and irrational. Similarly, the 1st to the 4th Respondents' failure to take action as required under Section 168A of the LDO amounts to a breach of a public duty.

In view of the reasons given above and the circumstances of the instant application Court issues Writ of Certiorari, Writ of Mandamus and the Writ of Prohibition as prayed for in the amended Petition. I order no cost.

Application is allowed.

Judge of the Court of Appeal